

Nos. 13-17102, 13-17154

IN THE
United States Court of Appeals For The Ninth Circuit

FACEBOOK, INC.,

Plaintiff-Appellee,

v.

POWER VENTURES, INC.

&

STEVEN SURAJ VACHANI,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of California
Case No. 5:08-cv-05780-LHK, The Honorable Lucy Koh

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
A RESPONSE TO APPELLANTS' PETITION FOR
REHEARING OR REHEARING EN BANC**

Eric A. Shumsky
ORRICK, HERRINGTON &
SUTCLIFFE LLP
Columbia Center
1152 15th Street, N.W.
Washington, D.C. 20005
(202) 339-8400

I. Neel Chatterjee
Monte Cooper
Brian P. Goldman
Robert L. Uriarte
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
(650) 614-7400

Counsel for Appellee Facebook, Inc.

Pursuant to Federal Rule of Appellate Procedure 26(b), Appellee Facebook, Inc., respectfully requests an extension of 14 days to file its response to Appellants' petition for rehearing or rehearing en banc, to and including Thursday, September 15, 2016. Counsel for Appellant Power Ventures, Inc., and pro se Appellant Steven Vachani, have stated that Appellants consent to this motion.

In support of its motion, Facebook states as follows:

1. This case involves the question whether Appellants violated federal and California computer trespass laws when they disregarded Facebook's direct instruction to stop accessing its computers and "circumvent[ed]" a technological "block" that Facebook had erected to keep Appellants out. Slip op. 7; *see United States v. Nosal*, 676 F.3d 854, 863 (9th Cir. 2012) (en banc) (holding that the Computer Fraud and Abuse Act creates liability for "the circumvention of technological access barriers"); SER 88 (Appellants' description of their "workaround solution" to circumvent Facebook's technological blocks); SER 160 (Appellants' general counsel likening Power.com's activity to "trespass to chattels").

2. Appellants received a 14-day extension of time to file their petition for rehearing or rehearing en banc. ECF Nos. 80, 83. Appellants filed their petition on August 9, 2016. ECF No. 85-1. On August 11, Facebook was ordered to file a response 21 days later, due on September 1, 2016. ECF No. 86.

3. A 14-day extension would cause Facebook's response to be due on September 15, 2016. This is Facebook's first request for an extension.

4. The extension is made necessary by counsel's summer travel plans and the press of business on other matters before the Courts of Appeals.

5. Lead appellate counsel Eric Shumsky has other upcoming deadlines in the Courts of Appeals. In the Federal Circuit, counsel has a petition for rehearing or rehearing en banc due on August 18 in *WBIP, LLC v. Kohler Co.*, Nos. 15-1038, -1044 (extension requested to September 1); and the opening brief for the appellant due on September 6 in *EMC Corp. v. Clouding Corp.*, No. 16-1999. Mr. Shumsky is also travelling internationally through August 20, 2016.

6. Counsel has exercised diligence in this case and, barring unforeseen circumstances, will be able to file the response within the time requested.

7. This motion is being filed more than seven calendar days before the original due date for the response.

Respectfully submitted,

Dated: August 12, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Brian P. Goldman

Brian P. Goldman

Counsel for Appellee Facebook, Inc.

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**DECLARATION OF BRIAN P. GOLDMAN IN SUPPORT OF
UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
A RESPONSE TO APPELLANTS' PETITION FOR
REHEARING OR REHEARING EN BANC**

I, Brian P. Goldman, hereby declare:

1. I am an attorney with the law firm Orrick, Herrington & Sutcliffe LLP, counsel for Facebook, Inc. I have personal knowledge of the matters set forth herein.

2. I submit this declaration in support of Facebook's motion for a 14-day extension of time in which to file its response to Appellants' petition for rehearing or rehearing en banc. This is Facebook's first request for an extension.

3. The extension is made necessary by counsel's summer travel plans and the press of business on other matters before the Courts of Appeals. Lead appellate counsel Eric Shumsky has other upcoming deadlines in the Courts of Appeals. In the Federal Circuit, counsel has a petition for rehearing or rehearing en banc due on August 18 in *WBIP, LLC v. Kohler Co.*, Nos. 15-1038, -1044 (extension requested to September 1); and the opening brief for the appellant due on September 6 in *EMC Corp. v. Clouding Corp.*, No. 16-1999. Mr. Shumsky is also travelling internationally through August 20, 2016.

4. Counsel for Facebook has exercised diligence in this case and, barring unforeseen circumstances, will be able to file the response to the petition for rehearing or rehearing en banc within the time requested.

5. Marcia Hofmann, counsel for Appellant Power Ventures, Inc., informed counsel for Facebook that Power Ventures consents to this motion. Steven Vachani, pro se Appellant, stated that he consents to this motion as well.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 12, 2016

/s/ Brian P. Goldman

Brian P. Goldman
Counsel for Appellee Facebook, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 12, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Brian P. Goldman

Brian P. Goldman

Counsel for Appellee Facebook, Inc.